

# **EXHIBIT 23**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION

4                   -   -   -

5  
6           IN RE:   NATIONAL                   :   HON. DAN A.  
7           PRESCRIPTION OPIATE           :   POLSTER  
8           LITIGATION                   :     
9                   :     
10          APPLIES TO ALL CASES           :   NO.  
11                   :   1:17-MD-2804  
12                   :   

13                   -   HIGHLY CONFIDENTIAL   -

14           SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

15                   VOLUME I

16                   -   -   -

17                   April 17, 2019

18                   -   -   -

19                   Videotaped deposition of  
20           THOMAS PREVOZNIK, taken pursuant to  
21           notice, was held at the law offices of  
22           Williams & Connolly, 725 12th Street,  
23           Washington, D.C., beginning at 9:11 a.m.,  
24           on the above date, before Michelle L.  
25           Gray, a Registered Professional Reporter,  
26           Certified Shorthand Reporter, Certified  
27           Realtime Reporter, and Notary Public.

28                   -   -   -

29                   GOLKOW LITIGATION SERVICES  
30           877.370.3377 ph | 917.591.5672 fax  
31                   deps@golkow.com

1                   DEA-Prevoznik-1.)

2                               (Document marked for  
3                   identification as Exhibit  
4                   DEA-Prevoznik-2.)

5       BY MS. MAINIGI:

6               Q.       The notice of videotaped  
7       30(b)(6) deposition for your testimony  
8       today.

9                               Do you see that?

10              A.       Yes, I do.

11              Q.       And do you see that attached  
12       to the notice is a letter dated March 22,  
13       2019, from the Department of Justice  
14       addressed to myself, and Ms. Singer of  
15       Motley Rice?

16              A.       Yes.

17              Q.       Have you had a chance to  
18       review, either alone or with your  
19       counsel, the substance of this March 22nd  
20       letter as well as the notice of  
21       deposition?

22              A.       Yes, I have.

23              Q.       And do you understand that  
24       you are here today testifying in a

1 30(b)(6) capacity on behalf of the Drug  
2 Enforcement Administration?

3 A. Yes, I do.

4 Q. And as I understand it, you  
5 will be testifying as to certain topics  
6 designated consistent with the letter  
7 dated March 22, 2019, correct?

8 A. Correct.

9 Q. Okay. Now, if you could  
10 turn to the letter itself, Mr. Prevoznik.  
11 And I'm looking specifically at Page 2 of  
12 the letter.

13 A. Okay.

14 Q. You have been designated to  
15 provide testimony on Topic 2, DEA's  
16 interpretation and enforcement of and  
17 practices related to 21 U.S.C. Section  
18 823 and 21 C.F.R. Section 1301.74,  
19 subject to the limitations set forth by  
20 DOJ in this letter, correct?

21 A. Correct.

22 Q. How -- I notice,  
23 Mr. Prevoznik, that Exhibit 3 that is in  
24 front of you, is a deposition prep chart,

1 the characterization.

2 THE WITNESS: Nationwide,  
3 correct.

4 BY MS. MAINIGI:

5 Q. Instead, one-off guidance  
6 was perhaps provided in the context of  
7 individual distributor meetings, correct?

8 A. Yes. Along with the MOAs  
9 and the settlements that were done.

10 Q. And is there documentation  
11 of what was said at the individual  
12 distributor meetings?

13 A. It would be the PowerPoints  
14 and the report -- after report.

15 Q. And this is an internal DEA  
16 report?

17 A. Yes.

18 Q. And have you reviewed those  
19 internal DEA reports for the purpose of  
20 preparing for your testimony today?

21 A. Some of them.

22 Q. Now, does the DEA agree that  
23 there's more than one way to design and  
24 operate a system that can identify and

1 report suspicious orders?

2 A. Yes.

3 Q. And there's no single  
4 feature that makes a suspicious order  
5 monitoring system compliant, correct?

6 A. Correct.

7 Q. And the DEA leaves it up to  
8 the registrant to design a system that  
9 works with its own business model and  
10 customer base, correct?

11 A. Correct.

12 Q. Does it matter to the DEA  
13 whether a registrant reviews orders  
14 manually or uses an automated system?

15 A. No, it doesn't matter.

16 Q. Other than requiring that  
17 the report, suspicious order report  
18 clearly indicate that the order is  
19 suspicious, does DEA require suspicious  
20 order reports to follow a particular  
21 format?

22 A. That's correct.

23 Q. Let me ask the question  
24 again. The DEA does not require

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4                               -   -   -  
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14                           - HIGHLY CONFIDENTIAL -  
15

16          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
17

18                           VOLUME II  
19                               -   -   -  
20

21                           April 18, 2019  
22                               -   -   -  
23

24                           Continued videotaped  
deposition of THOMAS PREVOZNIK, taken  
pursuant to notice, was held at the law  
offices of Williams & Connolly, 725 12th  
Street, Washington, D.C., beginning at  
8:16 a.m., on the above date, before  
Michelle L. Gray, a Registered  
Professional Reporter, Certified  
Shorthand Reporter, Certified Realtime  
Reporter, and Notary Public.

25                               -   -   -  
26                           GOLKOW LITIGATION SERVICES  
27                           877.370.3377 ph | 917.591.5672 fax  
28   deps@golkow.com  
29

1                   Retail chain pharmacies  
2   commonly use a self-distributing model  
3   where they distribute to chain pharmacy  
4   locations that they own.

5                   MR. FINKELSTEIN:  Objection.  
6                   Scope.  Answer if you know.

7                   THE WITNESS:  Some do, and  
8                   some have changed.

9   BY MR. STEPHENS:

10                  Q.     Okay.  For example,  
11   Walmart's distribution centers only  
12   distributed to Walmart pharmacies at  
13   Walmart store locations?

14                  MS. SINGER:  Objection.

15                  MR. FINKELSTEIN:  Objection.  
16                  Scope.  Calls for speculation.

17                  THE WITNESS:  That was  
18                  correct, yes.

19   BY MR. STEPHENS:

20                  Q.     All right.  I'd like to ask  
21   you some questions about Topic 3 related  
22   to the guidance that DEA provides  
23   regarding the adequacy of SOM systems.

24                  Okay?



1     acknowledged in presentations that it  
2     gave that no chain pharmacies were rogue  
3     pharmacies, right?

4             A.     Correct.

5                     MR. FINKELSTEIN:   Hang on  
6                     one second.   I am just reading the  
7                     question.

8                     Okay.

9     BY MR. STEPHENS:

10            Q.     Your answer was "correct,"  
11     right?

12            A.     Yes.

13            Q.     Walmart, CVS, Rite Aid,  
14     Walgreens, HBC Giant Eagle are all chain  
15     pharmacies, true?

16            A.     True.

17            Q.     DEA is generally aware that  
18     Walmart only distributes controlled  
19     substances to its own Walmart store  
20     pharmacies, right?

21                     MR. FINKELSTEIN:   Objection.  
22                     Scope.   Calls for speculation.

23                     THE WITNESS:   Well, that  
24                     just changed.   But prior to the

1 change, yes.

2 BY MR. STEPHENS:

3 Q. Okay. And the change now is  
4 that they don't distribute at all, right?

5 A. Correct.

6 Q. Okay. Walmart did not  
7 distribute controlled substances to  
8 internet pharmacies, right?

9 MR. FINKELSTEIN: Scope.  
10 Calls for speculation.

11 THE WITNESS: I don't know.  
12 I can't answer that, because I  
13 don't know if there were any sales  
14 store -- from the store to one of  
15 those -- one of those potentially  
16 rogue pharmacies.

17 BY MR. STEPHENS:

18 Q. I'm only talking about --

19 MR. FINKELSTEIN: Let him  
20 finish his answer.

21 MR. STEPHENS: I've let him  
22 finish his answer.

23 MR. FINKELSTEIN: No, you  
24 haven't let him finish his answer.

1 MR. STEPHENS: All morning  
2 long.

3 BY MR. STEPHENS:

4 Q. Mr. Prevoznik, have I been  
5 interrupting you this morning?

6 A. I'm fine.

7 Q. Okay. Thank you.

8 CVS did not distribute  
9 controlled substances to rogue internet  
10 pharmacies, correct?

11 MR. FINKELSTEIN: Vague.

12 THE WITNESS: Again, I don't  
13 know if there were transactions  
14 between the -- a pharmacy to  
15 pharmacy.

16 BY MR. STEPHENS:

17 Q. I'm talking about  
18 distribution.

19 MR. FINKELSTEIN: Scope.

20 Incomplete hypothetical. Vague.

21 THE WITNESS: Well, now that  
22 you've added distribution in that,  
23 then no, not to my knowledge.

24 BY MR. STEPHENS:

1           Q.     My question, Mr. Prevoznik,  
2     just to reconfirm, all deal with  
3     distribution here.

4           A.     Okay.

5           Q.     Okay. So I'll re-ask it. I  
6     think we got an answer. But let me  
7     re-ask it so the record is clear.

8                     CVS did not distribute  
9     controlled substances to rogue internet  
10    pharmacies right?

11          A.     Not --

12                    MS. SINGER: Objection  
13                    scope.

14                    MR. FINKELSTEIN: Wait, Tom.  
15                    Scope. Incomplete  
16                    hypothetical. Vague. We're past  
17                    seven hours, and you're still  
18                    outside the scope. I'm going to  
19                    start instructing him not to  
20                    answer.

21                    You can answer this time.

22                    THE WITNESS: Not to my  
23                    knowledge.

24    BY MR. STEPHENS:

1                   In 2018, the change that was  
2   made was DEA would now tell Distributor A  
3   that there are four distributors  
4   including yourself who are supplying  
5   Customer A; is that right?

6           A.     Correct.

7           Q.     Okay.

8           A.     If I could --

9           Q.     Yeah.

10          A.     -- just based on the base  
11   code. Drug base code.

12          Q.     Okay. And what do you mean  
13   by that?

14          A.     Like hydrocodone. It's not  
15   going into specific products. It's  
16   hydrocodone.

17          Q.     Okay. In 2018, DEA did not  
18   tell me, Distributor A, the quantities  
19   that were being supplied to Customer A by  
20   Distributor B, C, and D, correct?

21          A.     Correct.

22          Q.     In 2019, DEA amended its  
23   process and now provides that  
24   information?

1           A.       Yes.   De-identified.

2                   MR. FINKELSTEIN:   Note for  
3           the record that the witness wasn't  
4           authorized to testify about  
5           decisions on or after  
6           February 2018.   But as the witness  
7           is knowledgeable, I'll allow  
8           testimony.

9                   MR. STEPHENS:   And -- and,  
10          Counsel, for your benefit, I'm  
11          just trying to identify time  
12          frames and all that so the record  
13          is complete.   That's it.

14                  MR. FINKELSTEIN:   Okay.

15                  MR. FARRELL:   The plaintiffs  
16          continue their objection to any  
17          attempt by you to establish  
18          evidence that's probative of your  
19          affirmative defenses and  
20          prejudicial to our case in chief.

21                  MR. STEPHENS:   I understand  
22          that you don't want me to get  
23          evidence that might hurt your  
24          case, Paul, but I think that's my

1 UNITED STATES DISTRICT COURT  
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4 IN RE: NATIONAL )  
5 PRESCRIPTION ) MDL No. 2804  
6 OPIATE LITIGATION )  
7 Case No.  
8 ) 1:17-MD-2804  
9 )  
10 THIS DOCUMENT RELATES ) Hon. Dan A.  
11 TO ALL CASES ) Polster  
12 )

13 FRIDAY, MAY 17, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Thomas  
18 Prevoznik, Volume III, held at the offices of  
19 WILLIAMS & CONNOLLY LLP, 725 Twelfth Street,  
20 NW, Washington, DC, commencing at 8:10 a.m.,  
21 on the above date, before Carrie A. Campbell,  
22 Registered Diplomate Reporter and Certified  
23 Realtime Reporter.

24 - - -

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27 deps@golkow.com

1 to Walmart stores.

2 QUESTIONS BY MS. FUMERTON:

3 Q. And your other commentary after  
4 you said "yes" was simply pure speculation on  
5 your part, correct?

6 A. Correct.

7 Q. Walmart was not a wholesale  
8 distributor of controlled substances,  
9 correct?

10 MR. FINKELSTEIN: Scope.

11 THE WITNESS: What do you mean  
12 by that?

13 QUESTIONS BY MS. FUMERTON:

14 Q. Well, various terms have been  
15 used by plaintiffs when asking questions, and  
16 what I'm distinguishing between are  
17 distributors who distribute the wholesale to  
18 many different pharmacies, independent and  
19 the like, and a distributor like Walmart that  
20 only self-distributes controlled substances.

21 Do you understand that  
22 distinction?

23 A. Yes, correct.

24 Q. Okay. So under that  
25 distinction, Walmart is not a wholesale



1 distributor of controlled substances,  
2 correct?

3 MR. FINKELSTEIN: Scope.

4 THE WITNESS: Correct.

5 QUESTIONS BY MS. FUMERTON:

6 Q. And that's true for Rite Aid as  
7 well, correct?

8 MR. FINKELSTEIN: Scope.

9 THE WITNESS: Yes.

10 QUESTIONS BY MS. FUMERTON:

11 Q. And Walgreens, CVS and HBC  
12 Giant Eagle, correct?

13 MR. FINKELSTEIN: Scope.

14 THE WITNESS: Yes.

15 QUESTIONS BY MS. FUMERTON:

16 Q. And would you agree that  
17 nonmembers -- well, let me strike that.

18 You would agree that there may  
19 be reasons why nonmembers of HDMA do not need  
20 to follow HDMA guidelines, correct?

21 MR. FINKELSTEIN: Scope.

22 Vague.

23 THE WITNESS: I don't even know  
24 that the HDMA members have to follow  
25 the guidelines either. I mean, the